IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.197 OF 1998

Village Panchayat of
Sangolda, Sangolda,
Bardez-Goa represented
by its Sarpanch,
Shri Dilip S.Kalangutkar,
r/o Livramento Vaddo,
Sangolda, Goa, Bardez, ... Petitioner.

versus

1. State of Goa,
   through its Chief Secretary,
   having its Office at
   Secretariat, Panaji-Goa.

2. Director,
   Directorate of Panchayat,
   Government of Goa,
   Junta House, 3rd floor,
   Panaji, Goa.

3. Miss Silvana Dias,
   r/o Bell-Vista,
   Sangolda, Bardez, Goa,
   through her Attorney
   Shri Samson Dias,
   r/o Bella-Vista,
   Sangolda, Bardez-Goa. ... Respondents.

Mr. D. P. Bhise, Advocate for the Petitioner.

Mr. H. R. Bharne, Government Advocate for the Respondent Nos.1 and 2.

Mr. S. D. Lotlikar, Senior Advocate with Mr. A. D. Bhobe, Advocate for the Respondent No.3.

CORAM: D. G. DESHPANDE &
P. V. HARDAS, JJ.

DATED: 29TH JANUARY,2003.

ORAL JUDGMENT(PER P.V.HARDAS,J.)

The Petitioner in the present Petition has challenged the Administrative approval dated 24th January, 1997 given by the first Respondent and has also prayed for quashing and setting aside the Order dated 10th March, 1997 by which the second Respondent had allowed the Appeal filed by the third Respondent. The Petitioner has also prayed for quashing of the notice dated 16th January, 1998, whereby the second Respondent had asked the Petitioner to issue building permission to the third Respondent within one week from the receipt of the said Order.

2. The facts as are necessary for the decision of this Petition are as under:-

The Petitioner is a Village Panchayat of Sangolda who had sought acquisition of the land for the purpose of a play ground. The first Respondent granted Administrative approval by its Order dated 18th December, 1995 for acquisition of land admeasuring 5850 sq. metres comprising of survey Nos.95/68, 95/69, 95/71 and 95/79. The Petitioner contends that in pursuance to the Administrative approval, the Petitioner had deposited the

entire cost of the land before the Deputy Collector Land Acquisition, Panaji. From out of the land sought to be acquired, land at survey No.95/72 belongs to Respondent No.3. It appears that the Panchayat had rejected the application of the Respondent No.3 for permission to construct on the aforesaid land. The Respondent No.3 being aggrieved by the Order of the Panchayat had preferred Appeal No.51/95 to the Director of Panchayat i.e. Respondent No.2. The said Appeal came to be decided by an Order dated 10th March, 1997 by which the Respondent No.2 allowed the Appeal and directed the Petitioner herein to issue licence to the Respondent No.3 herein within fifteen days from the receipt of the notice as per the plans and drawings submitted by the Respondent No.3 herein on payment of necessary fees. The Petitioner has annexed to the present Petition only the text of the operative part of the Order which was passed by the second Respondent in the Appeal. The full text of the Judgment has not been annexed to the Petition. It appears that the present Petitioner did not comply with the directions issued by the Respondent No.2 and consequently the Respondent No.2 issued a notice to the present Petitioner to comply with the direction within a week from the receipt of the said notice also stating therein that if the present Petitioner failed to comply with the directions of Respondent No.2, further action

would be initiated for contempt of court against the present Petitioner.

3. Meanwhile, it appears that the Administrative approval was modified by virtue of the Order dated 24th January, 1997 under Section 3(f)(vii) of the Land Acquisition Act, 1894 and the land of the Respondent No.3 at survey No.95/72 came to be dropped. A copy thereof was marked to the present Petitioner. These three Orders are under challenge in the present Petition. The challenge to the modified Administrative sanction is that the present Petitioner ought to have been heard before the Administrative approval was modified by the Government as the area of acquisition was reduced from 5850 to 4350 sq. metres. The second ground of challenge in respect of the appellate Order of the second Respondent is that the second Respondent has committed error in issuing directions to Panchayat Secretary for issuing licence within specific period. These are the only two grounds which have been urged in support of the Petition.

4. The Respondent No.1 has filed an Affidavit in this Court in which it is stated that initially Administrative approval was granted vide Order dated 18th December, 1995 for acquisition of 5850 sq. metres of

land for development of play ground comprising of survey Nos.95/68, 95/69, 95/71, 95/72 and 95/79 situated at Sangolda Village in Bardez Taluka within the Village Panchayat of Sangolda. In para 3 of the Affidavit, it is stated that no acquisition proceedings commenced after the Administrative approval was granted by the aforesaid Order. There was a passage of time and the matter was reconsidered by the Government and the Government after careful consideration and being satisfied that an area of 4350 sq. metres was needed for public purpose, modified the said Administrative approval by the Order dated 24th January, 1997 granting approval for an area of 4350 sq. metres. By virtue of the said modified Administrative Order, the land of Respondent No.3 at survey No.95/72 was excluded.

5. Mr. D. P. Bhise, learned Counsel appearing on behalf of the Petitioner has urged the two grounds stated in the Petition before us. It is interesting to note that there is no challenge in the Petition to the jurisdiction of the Respondent No.2 to decide the Panchayat Appeal. All that is stated in the present Petition is that the Respondent No.2 has committed an error in directing the present Petitioner to issue the licence. Undeniably, the Respondent No.2 was an appellate Authority before whom the Goa Panchayat Raj

Act, 1994 was maintainable. The Authority after hearing the present Petitioner had decided the Appeal and had issued the directions for grant of licence within a particular time. There is no jurisdictional error in issuing such directions nor can the Authority be faulted for having issued a notice for non compliance of its directions. As stated by us earlier, the full text of the appellate Authority has not been annexed to the Petition and, therefore, the challenge on the merits of the decision of the Appeal has to fail as even the full text of the appellate Order has not been placed before us during the hearing. Even otherwise, there is no challenge to the appellate Judgment on merits and consequently, we see no substance whatsoever in the challenge to the directions issued by the appellate Authority directing the Petitioner to grant permission to Respondent No.3 within a specified time.

6. The Petitioner has not been able to show us any provision by which he can claim right of hearing before the Government modified the Administrative approval for the acquisition of land. No vested rights have been created and the Petitioner could not claim as of right that the Government should grant Administrative approval for the acquisition of 5850 sq.metres. It was open for the Petitioner to have made a representation to the

Government for reconsideration of its decision which the Petitioner has failed to do. The Petitioner has prayed for issuance of a writ of mandamus for directing the Government to grant Administrative approval for the acquisition of 5850 sq. metres of area. In the absence of any demand such a prayer cannot be entertained and even otherwise, it was principally within the domain of the Government for grant of Administrative approval to the area that was required for public purpose. There are no allegations, malafides or bias and in the absence of such allegations, this Court cannot re-examine and substitute its own opinion to that of the Government. The present Petition is thus devoid of any merit and deserves to be dismissed.

7. In the result, therefore, Writ Petition No.197 of 1998 is dismissed. Rule discharged with costs, quantified at Rs.5000/-. Needless to say interim Order stands vacated.

D. G. DESHPANDE, J.

P. V. HARDAS, J.

RD.